

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BENJAMIN WILLIAM WAGNER,

Plaintiff,

v.

JAMES GOBER, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)

No. 4:15-CV-1789 CAS

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for order directing the Missouri Department of Corrections ("MDOC") to return \$2.00 that was removed from his prison inmate account to pay the filing fee in this closed action. Plaintiff complains that MDOC deducted money from his account when his balance was less than \$10.

Under 28 U.S.C. § 1915(b)(1), if a prisoner brings a civil action, or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of the filing fee. The court shall assess, and when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of the average monthly deposit or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint or the notice of appeal.

In this action, plaintiff was assessed an initial partial filing fee of \$4.25 on January 20, 2016.¹ [Doc. 16] The Court then contacted the Missouri Department of Corrections to let the

¹The Court originally assessed a partial filing fee of \$4.25 in a December 21, 2015 Memorandum and Order that was vacated on January 20, 2016, after the Court granted in part and denied in part plaintiff's motion for reconsideration. [Doc. 14] Prior to being assessed the initial partial filing fee of \$4.25 on January 20, 2016, plaintiff paid \$10.00 toward the \$350.00 total filing fee.

Department know how to deduct payments from plaintiff's prison inmate account in accordance with the Prison Litigation Reform Act until plaintiff's filing fees were paid in full. *See* Letter to MDOC re: Initiation of Prison Installment Payments [Doc. 15].

28 U.S.C. § 1915(b)(2) sets forth the requirements for prisoner installment payments under the Prison Litigation Reform Act:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

In support of his motion for return of his money, plaintiff has attached a copy of his inmate account. Plaintiff's inmate account, however, is only a partial account statement for the months of November and December 2018. The statement does not show the entire month of November 2018, which would be necessary for the Court to calculate exactly how much income plaintiff had in the full month preceding the month that MDOC removed the \$2.00 filing fee on December 10, 2018.

Despite the lack of a full inmate account statement, it is apparent to the Court that plaintiff's request for relief must be denied, based on the income shown on plaintiff's account statement from November 10, 2018 through November 30, 2018,.

Plaintiff had \$40.00 of income between November 10, 2018 and November 30, 2018 [Doc. 77-1.] Twenty percent (20%) of \$40.00 is \$8.00, and the MDOC took only \$6.00 in total from plaintiff's account to pay filing fees for three of plaintiff's cases in December 2018, which is less than the \$8.00 limit allowed under the Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(2). Further, on the day that filing fees were removed from plaintiff's account, December 10, 2018, plaintiff had a total of \$57.00 in his account: \$47.00 that plaintiff

transferred from savings on December 7, 2018, and a payroll tip of \$10.00 deposited on December 10, 2018.²

For these reasons, the Court will deny plaintiff's motion for an order directing the Missouri Department of Corrections to return \$2.00 removed from his prison inmate account to pay the filing fee in this closed action.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for order directing the Missouri Department of Corrections to return money to his inmate account is **DENIED**. [Doc. 77]

IT IS FURTHER ORDERED that an appeal of this Order would not be taken in good faith.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 10th day of January, 2019.

²The account statement also shows that plaintiff spent \$47.00 at the canteen at Farmington Correctional Center on December 10, 2018, but this may not have been known to the Jefferson City, Missouri MDOC office on that date, when the filing fee withdrawal was made.